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March 24, 2011

VIA CM/ECF & FedEx

Hon. Madeline Cox Arleo, U.S.M.J.
United States District Court
District of New Jersey
M.L. King, Jr. Federal Building & Courthouse
50 Walnut Street
Newark, New Jersey 07101

Re: BanxCorp v. Bankrate, Inc.
Civil Action No. 07-3398 (SDW)

Dear Judge Arleo:

This firm represents defendant Bankrate, Inc. in the referenced matter. Bankrate's motion to compel plaintiff BanxCorp to produce documents is pending before Your Honor and an appearance in connection with the motion is scheduled for March 29.

As set forth in Bankrate's moving papers, BanxCorp has produced virtually no correspondence of any kind from the years in which it claims to have been foreclosed from competing with Bankrate. Although BanxCorp's claims in this case are predicated upon its inability to attract customers or grow its business in order to compete with Bankrate, BanxCorp has not produced the documents that would necessarily have to have existed in order for those claims to be true. We believe that BanxCorp has not produced any such documents because whatever existed was harmful to BanxCorp, or has been destroyed, or both.

I am enclosing a copy of a document (bearing document identification number BR00042867-42868) that illustrates the extent of BanxCorp's gamesmanship in this case, which Bankrate recently produced to BanxCorp. The document is a copy of an email string, including an email from Norbert Mehl of BanxCorp to Tom Evans of Bankrate. We found this document in Bankrate's files while searching for documents responsive to BanxCorp's document requests. BanxCorp did not produce a copy of this email (in fact, it produced only three emails from 2005). I am bringing this document to Your Honor's attention as a concrete illustration of the kind of correspondence that existed in BanxCorp's files but has not been produced. The statements by Mr. Mehl in the document are inconsistent with the claims asserted by BanxCorp in this case. It appears that BanxCorp has either destroyed its copies of this document or deliberately refused to produce it in this case.

Hon. Madeline Cox Arleo, U.S.M.J.
Page 2

March 24, 2011

We respectfully request that the Court make inquiry of BanxCorp on the 29th concerning BanxCorp's failure to produce copies of correspondence like this email. It is important that we know, as soon as possible, if BanxCorp has destroyed records relevant to this case. If the records have been destroyed, we will ask the court to set a schedule for a motion seeking dismissal of the case as a sanction for spoliation. If the records have not been destroyed, then BanxCorp must be required to produce them immediately.

Respectfully submitted,


R. Scott Thompson

Enclosure

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03/24/2011 17080533.1

cc: Nelson E. Canter, Esq. (via ECF & e-mail w/ encl.)
Mordechai Lipkis, Esq. (via ECF & e-mail /w encl.)
Michael J. Hahn, Esq.
Eric Jesse, Esq.

**Lowenstein
Sandler**
ATTORNEYS AT LAW

From: Cotter Cunningham <cotterc@brm.com>
Sent: Monday, November 28, 2005 10:50 PM
To: Tom Evans <TEvans@bankrate.com>
Subject: Re: Exploring sale of BanxQuote

Wow. Crawling out of the woodwork now... I don't know 'em personally. We have approached him 2x I think. Once was bill anderson and peter the other was elisabeth.

They are I believe, tiny. Would be interested in the book. Could be a decent fit if the \$ wasn't too high....

Cc

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Tom Evans <tevans@bankrate.com>
To: Cotter Cunningham <ccunningham@bankrate.com>
Sent: Mon Nov 28 16:48:58 2005
Subject: Fw: Exploring sale of BanxQuote

Ever run into these cats ?

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Norbert Mehl <norbert.mehl@banx.com>
To: Tom Evans <tevans@bankrate.com>
Sent: Mon Nov 28 14:15:32 2005
Subject: Exploring sale of BanxQuote

Dear Tom,

I would like to explore the sale of BanxQuote.com.

I founded BanxQuote in 1984 and kept it as a small annuity-type business, running practically on auto-pilot (most recent ttm annual revenues under half a million dollars). As part of a larger company in a related industry or an aggressive comparison shopping site, BanxQuote could grow significantly with minimal effort. Furthermore, two years ago I launched an unrelated luxury lifestyle magazine called Panache (see www.panachemag.com <<http://www.panachemag.com/>>), which takes up most of my time and resources.

I haven't been keen on growing BanxQuote on my own as a stand-alone business, and have been waiting for favorable market conditions that would allow me to cash out at a decent price. This may be a good time, in light of several recent transactions in this field.

I have been approached by other interested parties and, as a result, I am beginning to test the waters among a short list of potential buyers. Let me know if you are interested. I look forward to hearing from you.

Best regards,

Norbert Mehl | BanxCorp
222 Bloomingdale Road, Suite 116
White Plains, NY 10605
Tel. 914-644-1800 | Fax 914-644-1840
www.banx.com <<http://www.banx.com/>>

BanxQuote was established in 1984. Current and past clients of the firm include most of the nation's leading financial institutions.

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BanxQuote provides daily and real-time (high, low, avg) market rates for comparison shopping of deposits and loans from financial institutions in all fifty states and Washington, DC, with state-by-state, regional, and national composite benchmarks. BanxQuote also licenses its proprietary data and financial applications to third parties, including Bloomberg, UBS, GE Capital, Discover, MetLife Bank, Bear Stearns, CapitalOne, Ford Credit, etc.

During the past two decades, BanxQuote has been featured by leading news media, including Dow Jones, The Wall Street Journal, Reuters, Bloomberg, Knight-Ridder, The New York Times, CBS, Business Week, Fortune, Forbes, American Banker, Advance Publications, and many others.

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